

ORIGINAL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

RECEIVED
JUL 29 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of
Policies and Rules Concerning
Children's Television Programming

Revision of Programming Policies
for Television Broadcast Stations

)
)
) MM Docket No. 93-48
)
)

DOCKET FILE COPY ORIGINAL

TO: The Commission

**Supplemental Comments of the
National Association of Broadcasters**

The National Association of Broadcasters ("NAB")¹ submits these supplemental comments to provide the Commission with the results of recent discussions between NAB and the Clinton Administration.

As announced by President Clinton this morning, these discussions have proven fruitful. NAB is submitting with these supplemental comments the letter NAB President & CEO Eddie Fritts sent to President Clinton describing the agreement and attaching an outline of the proposal and the text of proposed rules that would effectuate it. NAB can and does support this proposal. We believe its adoption would fulfill the Commission's objectives in this proceeding.

Under this proposal, the Commission would adopt a processing guideline under which broadcasters could obtain staff approval of the children's television service portion of their renewal applications by showing that they either aired an average of three hours per week of

¹ NAB is a non-profit incorporated association of radio and television stations and the major broadcasting networks. NAB serves and represents the American broadcasting industry.

newly defined “core” educational and informational programming for children or that, while they aired somewhat less than this amount of “core” programming, they aired a package of other programs that demonstrated the same level of commitment to the needs of children. Along with this processing guideline, the proposal calls for the Commission to adopt a revised definition of the programming that it will consider in applying the guideline and for rules requiring broadcasters to engage in various kinds of efforts to inform the public about their educational and informational programming for children.

NAB believes that the record assembled by the Commission in this proceeding would support these initiatives to clarify the Commission’s evaluation of broadcasters’ service to children. Because this proposal retains substantial flexibility for broadcasters in meeting their obligations under the Children’s Television Act, NAB believes that a constitutional rationale can be crafted in support of these regulations that rests on established First Amendment doctrines long accepted by the Commission.

Conclusion


NAB is pleased that broadcasters have been able to agree with the Administration on a proposed way to more clearly define broadcaster's obligations under the Children's Television Act. We urge the Commission to adopt a report and order consistent with the attached proposals.

Respectfully submitted,

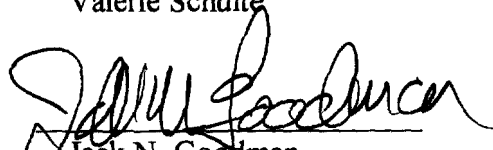
NATIONAL ASSOCIATION
OF BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036



Henry L. Baumann

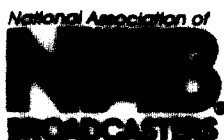


Valerie Schulte



Jack N. Goodman
Counsel

July 29, 1996



Edward O. Fritts

President & CEO
1771 N Street, NW
Washington, DC 20036-2891
(202) 429-5444
Fax: (202) 429-5410
E-mail: efritts@nab.org

July 28, 1996

The Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 20005

My Dear Mr President:

Over the last several days, we have engaged in discussions with representatives of your Administration to determine whether a proposal could be advanced that fulfilled the objectives you have outlined to provide more educational and informational television programming to America's children.

Let me begin by making clear that we are Americans first and broadcasters second. Broadcasters agree with you that, as a Nation, our children are our most precious asset. Broadcasters take seriously their obligation to serve the needs and interests of the children in their communities, and they are particularly cognizant of the obligation to serve the educational and informational needs of children that was set forth in the Children's Television Act.

I am extremely pleased that we appear to have reached agreement with your representatives on proposed changes to the FCC's rules. An outline of this proposal, together with the text of the rules that we would jointly urge the FCC to adopt, is attached. While in many ways, this agreement incorporates provisions about which we have had reservations, we believe that the proposal overall is consistent with Congress' intent in the Act, addresses specific problems that the record before the Commission demonstrates, and provides useful guidance to licensees about the ways that they can fulfill their obligations under the Act while allowing them the programming flexibility that the FCC has always recognized is an essential element of the Communications Act. In our view, the proposal can be justified on well-accepted constitutional grounds. We fully expect that any FCC order implementing this agreement would be entirely consistent with both its letter and its spirit. If the FCC acts in that manner, we would be opposed to any effort to challenge its decision in court and I can assure you that we would not file such a challenge ourselves. We would hope that you would join with us in opposing any decision that goes beyond the boundaries of this agreement.

The proposal calls for the FCC to adopt a processing guideline under which broadcasters could obtain staff approval of the children's television service portion of their renewal applications by showing that they either aired an average of three hours per week of regularly scheduled

The Honorable William J. Clinton

July 28, 1996

Page 2

educational and informational programming for children or that, while they aired somewhat less regularly scheduled programming, they aired a package of other programs that demonstrated the same level of commitment to the needs of children. Along with this processing guideline, the FCC would adopt a revised definition of the programming that it will consider in applying the guideline and rules requiring broadcasters to engage in various kinds of efforts to inform the public about their educational and informational programming for children.

NAB is pleased that broadcasters appear to have been able to agree with the Administration on a proposal that will result, as FCC Chairman Hundt has often wished, in "a good day for kids." We will join with the Administration in urging that the FCC adopt the proposal as we and the Administration have envisioned it.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Bradley", with a long horizontal flourish extending to the right.

Attachments

Agreement on Children's Television Rules

1. Processing Guideline

- The Commission should adopt a three hour processing guideline.
- Under this guideline, the Mass Media Bureau will be authorized to approve the Children's Television Act portions of a broadcaster's renewal application where the broadcaster has aired three hours per week (averaged over a six month period) of educational and informational programming that has as a significant purpose serving the educational and informational needs of children ages 16 and under.
- A broadcaster can demonstrate that it has aired three hours per week of such programming in either of two ways:
 - (A) By checking a box and providing supporting information indicating that it has aired three hours per week of regularly scheduled, weekly shows that are 30 minutes or longer and that otherwise meet the definition of "core programming" (see below), or
 - (B) By showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming.
- Broadcasters that do not meet this guideline will be referred to the Commission, where they will have a full opportunity to demonstrate compliance with the Children's Television Act, e.g., by relying in part on sponsorship of core educational/informational programs on other stations in the market that increases the amount of core educational or informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming.

2. Definition

- The Commission should tighten the definition of programming “specifically designed” to educate and inform children -- “core programming.”
- Core programming is regularly scheduled, weekly programming of at least 30 minutes, aired between 7:00 a.m. and 10:00 p.m., that has serving the educational and informational needs of children ages 16 and under as a significant purpose. The educational/informational objective and the target child audience are specified in writing in the broadcaster’s Children’s Educational/Informational Television Report (see public information initiatives below).
 - While a program must be regularly scheduled on a weekly basis to qualify as core, the Commission should allow the Bureau to determine what constitutes regularly scheduled programming and what level of preemption is allowable.
- Specials, PSAs, short-form programs and regularly scheduled non-weekly programs with a significant purpose of educating and informing children ages 16 and under can help accomplish the objectives of the Children’s Television Act. They can count toward the staff level 3 hour processing guideline, as described in paragraph (B) above.
- In determining whether programming has a significant purpose of educating and informing children, the Commission will ordinarily rely on the good faith judgment of broadcasters, who will be subject to increased community scrutiny (see public information initiatives below). Commission review of compliance with the significant purpose prong of the new definition will be done only as a last resort.
- The general definition of educational and informational programming is programming that furthers the educational and informational needs of

children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs.

3. Public Information Initiatives

- The Commission should adopt measures to increase the flow of information to the public about broadcasters' educational and informational programming.
 - Broadcasters will identify core programs at the beginning of the program, in a form that is at the sole discretion of the licensee.
 - Broadcasters will provide to program guide publishers information identifying core programming, including an indication of the age group for which the program is intended.
 - Broadcasters will place in their public files completed Children's Educational/Informational Television Reports, reflecting programming efforts made during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Reports will be filed quarterly, at the same time as quarterly issues/programs reports that broadcasters now prepare. The Reports will include the name of the individual at the station responsible for collecting comments on the station's compliance with the CTA, and it will be separated from other materials in the public inspection file. Broadcasters will publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, Broadcasters will file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, preferably in electronic form.

4. Enforcement

- The Commission will conduct a review of filed Reports at the end of three years plus individual station audits in the interim.

Proposed Changes in Children's Television Rules

1. Definition

Section 73.671 of Title 47 would be amended as follows:

(a) Each commercial and noncommercial television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

* * * *

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs.

Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

- (1) it has serving the educational and informational needs of children ages 16 and under as a significant purpose;
- (2) the educational/informational objective and the target child audience are specified in writing in the licensee's Children's Television Educational/Informational Programming Report, as described in Sec. 73.3526(a)(8)(iii);
- (3) it is aired between the hours of 7:00 a.m. and 10:00 p.m..;
- (4) it is a regularly scheduled weekly program;
- (5) it is at least 30 minutes in length; and
- (6) instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides.

The following note would be added to section 73.671

NOTE 1: For purposes of determining under this section whether programming has a significant purpose of serving the educational and

informational needs of children, the Commission will ordinarily rely on the good-faith judgments of broadcasters. Commission review of compliance with that element of the definition will be done only as a last resort.

2. Processing Guideline

The following Note would be added to Section 73.671:

NOTE 2: The Commission will use the following processing guideline in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA"). A licensee that has aired at least three hours per week of Core Programming (as defined in Sec. 73.671(c) and as averaged over a six month period) will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. In this regard, specials, PSAs, short-form programs and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have a full opportunity to demonstrate compliance with the Children's Television Act (e.g., by relying in part on sponsorship of core educational/informational programs on other stations in the market that increases the amount of core educational or informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

3. Public Information Initiatives

Section 73.673 will be added as follows:

(a) Each television broadcast licensee shall identify programs specifically designed to educate and inform children at the beginning of the program, in a form that is in the discretion of the licensee.

(b) Each television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

Section 75.3526 would be amended as follows:

(a)(8)(iii) For TV broadcast stations, on a quarterly basis, a licensee must place in its public file a completed Children's Educational/Informational Television Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core programs meet the definition in Section 73.671. The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the CTA, and it shall be separated from other materials in the public inspection file. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, preferably in electronic form.